Gregory G. Barnett
Martin F. Casey
CASEY & BARNETT, LLC
305 Broadway, Ste 1202
New York, New York 10007
(212) 286-0225
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHIQUITA BRANDS INTERNATIONAL SARL, GREAT WHITE FLEET LTD. and MARKEL CORPORATION, as interested subrogated underwriter,

Plaintiffs,

- against -

M/V SCANDINAVIAN REEFER, her engines, boilers, tackle, furniture, apparel, etc., *in rem*; CHARTWORLD SHIPPING CORPORATION, BYRON SHIPPING COMPANY LIMITED and KOLLAKIS GROUP *in personam*,

Defendants.

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COMPLAINT

Plaintiff, CHIQUITA BRANDS INTERNATIONAL SARL and GREAT WHITE FLEET LTD. (together referred hereinafter as "Chiquita") and MARKEL CORPORATION, (all together referred hereinafter as "Plaintiffs"), by and through their attorneys, Casey & Barnett LLC, as and for its Complaint, alleges upon information and belief as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333 and the General Maritime Law of the United States.

PARTIES

2. At all material times, CHIQUITA BRANDS INTERNATIONAL SARL was and is a corporation organized and existing by virtue of the law of a state or country other than New York with an office located at A-One Business Centre B4 La Piece, Route de l'Etraz Rolle 1180 Switzerland. CHIQUITA BRANDS INTERNATIONAL SARL was and is engaged, inter alia, in the purchase, exportation and sale of fresh fruit, including bananas, and was the owner in title to the cargos of bananas loaded onboard the M/V SCANDINAVIAN REEFER in April 2016.

3. At all material times, GREAT WHITE FLEET LTD. was and is a corporation organized and existing by virtue of the law of a state or country other than New York with an office and place of business located at Hamilton, Bermuda and registered with the Registrar of Companies under number EC 14776. GREAT WHITE FLEET LTD was and is engaged in the transportation of fruit from Central and South America to, among other places, the Mediterranean and was the time charterer of the M/V SCANDINAVIAN REEFER in April and May 2016.

4. At all material times, MARKEL CORPORATION was and is an insurance company organized and existing by virtue of the law of a state or country other than New York with an office and place of business located at 4521 Highwoods Parkway, Glen Allen, Virginia 23060.

5. At all material times, the M/V SCANDINAVIAN REEFER (hereinafter "Vessel") was and is an oceangoing reefer vessel built in Denmark in 1992, is flagged in the Bahamas, has the IMO No. 8917560, call sign C6UL9, which engages in the common carriage of

merchandise by water for hire between various foreign and domestic ports and which is now, or will be during the pendency of this action, within the jurisdiction of this Honorable Court.

6. At all material times, defendant CHARTWORLD SHIPPING CORPORATION was and is a foreign company with an office and place of business located at 2, Zisimopoulou Street & Poseidonos Avenue, Glyfada, 166 74, Athens, Greece and owns, operates, manages and/or charters ships, including the M/V SCANDINAVIAN REEFER, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, beneficial owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V SCANDINAVIAN REEFER, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

7. At all material times, defendant BYRON SHIPPING COMPANY LIMITED was and is a foreign company with an office and place of business located at Trust Company Complex Ajeltake Road Ajeltake Island Majuro MH96960, Marshall Islands and owns, operates, manages and/or charters ships, including the M/V SCANDINAVIAN REEFER, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, beneficial owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V SCANDINAVIAN REEFER, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

8. At all material times, defendant KOLLAKIS GROUP was and is a foreign company with an office and place of business located at 2, Zisimopoulou Street & Poseidonos Avenue, Glyfada, 166 74, Athens, Greece and owns, operates, manages and/or charters ships, including the M/V SCANDINAVIAN REEFER, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, beneficial owner,

owner *pro hac vice*, charterer, manager and/or operator of the M/V SCANDINAVIAN REEFER, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

9. Plaintiffs bring this action on their own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignments, as their respective interests may ultimately appear, and plaintiffs are entitled to maintain this action.

10. On or about April 16 and 17, 2016, a consignment consisting of 211,200 cartons of fresh Ecuadorian bananas, laden in refrigerated containers and under deck then being in good order and condition, was delivered to the M/V SCANDINAVIAN REEFER and to *in personam* defendants and/or their agents in Guayaquil, Ecuador by Plaintiffs for transportation to various Ports of Call in the Mediterranean, all in consideration of an agreed upon freight.

11. There was loaded 168,720 cartons of bananas under deck while 42,480 cartons of bananas were loaded into containers and stowed on-deck of the M/V SCANDINAVIAN REEFER. Both the bananas and containers were owned by and/or consigned and/or leased to Plaintiffs, and were in good order and condition at the time they were delivered to the *in personam* defendants and the vessel for carriage aboard the M/V SCANDINAVIAN REEFER.

12. The transportation of the fruit was all in consideration of an agreed freight and in accordance with the terms of one or more bills of lading, which were then and there signed and delivered to the shipper of the cargo by the duly authorized agent, representative and/or employee of the *in personam* defendants and the M/V SCANDINAVIAN REEFER.

13. The Vessel was due to arrive in Gibraltar on or about May 3, 2016 and then proceed to Italy, Greece and/or Turkey to discharge its cargo.

14. On or about April 21, 2016 the Vessel experience a Main Engine shutdown due to a detected leakage on one of the engine's cylinders. Because the cylinder could not be repaired at sea the Vessel diverted to Santo Domingo, Dominican Republic operating on 8 of 9 cylinders, arriving in Santo Domingo on April 27, 2016.

15. On May 19 and 20, 2016, an inspection of the cargo was done in Santo Domingo to ascertain the condition of the bananas. At that time the fruit was already 33-38 days old. Some of the fruit was already showing that it was getting close to the end of green life and should have been dispatched to the ripeners immediately because further delay would result in losses.

16. The Vessel was further delayed and eventually was only able to sail from Santo Domingo on May 24, 2016, more than 30 days after the Vessel experience the Main Engine shutdown.

17. Fresh fruit is perishable and the excessive delay of the vessel caused the fruit to be damaged.

18. Chiquita agreed to attempt to salvage the fruit onboard the vessel by sailing the vessel to Gibraltar.

19. On June 2, 2016 the fruit was again inspected while the Vessel was anchored in Gibraltar. During that inspection all of the on deck cargo of bananas was showing aging symptoms and at least 5% were already ripe and turning. The inspection of the underdeck cargo also showed aging symptoms and 11.5% were ripe and turning. Considering the condition of the bananas it was determined that in order to sell the fruit, immediate delivery of same was necessary.

20. The excessive delay in transporting the fruit to its original market damaged the fruit and therefore alternate markets were sought to mitigate damages.

21. Eventually a sale was made for the damaged cargo in Turkey and the Vessel arrived and began discharging operations in Mersin, Turkey on June 8, 2016 and completed discharge operations on June 11, 2016.

22. On June 9, 2016 the fruit was again inspected in Mersin, Turkey. At that time the age of the fruit was between 54-61 days old. The receiver rejected 1,941 boxes of the containerized bananas and an additional 8,064 boxes from underdeck, resulting in a total of 10,098 boxes being rejected. The receiver agreed to accept 8,064 boxes of ripe and turning cases for free, which saved disposal costs back in the tropics.

23. It was determined that the damage caused by the delay in transporting the cargo was the sole reason for the damage to the fruit.

24. In addition to the losses due to the damaged cargo and the costs of salvage Chiquita suffered additional costs in having to dispose of the rejected cargo in the tropics.

25. At all times relevant hereto, a contract of insurance for property damage was in effect between MARKEL CORPORATION and CHIQUITA which provided coverage for, among other things, loss or damage to the consignments.

26. Pursuant to the aforementioned contract of insurance between MARKEL CORPORATION and CHIQUITA monies have been expended on behalf of CHIQUITA to the detriment of MARKEL CORPORATION due to the damages to the fruit sustained during transit.

27. As MARKEL CORPORATION has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendant, MARKEL CORPORATION has an

equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages against the defendant.

28. The losses sustained by CHIQUITA and MARKEL CORPORATION were not the result of any act or omission on the part of them but, on the contrary, were due solely as the result of the negligence, fault, neglect, breach of contracts of carriage, charter and bailment on the part of *in personam* defendants as well as the unseaworthiness of the M/V SCANDINAVIAN REEFER which was discoverable by the exercise of due diligence.

29. By reason of the foregoing, plaintiffs have sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be $3,000,000.

WHEREFORE, Plaintiffs pray:

1. That process in due form of law issue against the defendants, citing them to appear and answer under oath all and singular the matters alleged in the Complaint;

2. That judgment may be entered in favor of Plaintiffs against Defendants, joint and severally, for the amount of Plaintiff's damages in the amount of at least $3,000,000, together with interest, costs and the disbursements of this action; and

3. That this Court may grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
April 20, 2017

CASEY & BARNETT, LLC
Attorneys for Plaintiff

By: ______________________
Gregory G. Barnett
Martin F. Casey
305 Broadway, Ste 1202
New York, New York 10010
(212) 286-0225